

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RASHEED HILSON, SR.,

Plaintiff,

v.

JEFF LYNCH, et al.,

Defendants.

No. 1:23-cv-01757 GSA (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

ORDER RECOMMENDING DISMISSAL OF
CASE FOR FAILURE TO PROSECUTE AND
FAILURE TO KEEP COURT APPRISED OF
CURRENT ADDRESS

PLAINTIFF'S OBJECTIONS DUE IN
FOURTEEN DAYS

Plaintiff, a former state prisoner¹ proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the undersigned will recommend that this matter be dismissed for Plaintiff's failure to prosecute and for his failure to keep the Court apprised of his current address. Plaintiff will have fourteen days to file objections to this order.

I. RELEVANT FACTS

On December 22, 2023, Plaintiff's complaint was docketed while he was incarcerated at

¹ On September 11, 2024, a notice of change of address filed by Plaintiff was docketed. ECF No. 7. The notice of change of address appears to indicate that Plaintiff is no longer incarcerated at Kern Valley State Prison. See id.

1 Kern Valley State Prison. See ECF No. 1 at 1. Thereafter, Plaintiff was granted in forma
2 pauperis status. ECF No. 6. On September 11, 2024, a notice of change of address filed by
3 Plaintiff was docketed. ECF No. 7.

4 A. Order Directing Plaintiff to File Amended Complaint

5 On September 30, 2024, Plaintiff's complaint was screened. See ECF No. 8. The
6 screening order found that Plaintiff's complaint failed to comply with Federal Rule of Civil
7 Procedure 8(a)(2) and (d)(1). ECF No. 8 at 4. As a result, Plaintiff was given the opportunity to
8 file an amended complaint. See id. Plaintiff was given thirty days to do so. Id. At that time,
9 Plaintiff was cautioned that failure to comply with the Court's order within the time allotted
10 might result in a recommendation that this matter be dismissed. Id.

11 B. Order Directing Plaintiff to Show Cause; Alternatives to Order

12 On October 17, 2024, the Court's screening order was returned to it marked
13 "Undeliverable, Return to Sender, Not Deliverable as Addressed, Unable to Forward." See
14 10/17/24 docket entry. Several months passed and Plaintiff neither filed a notice of change of
15 address, nor requested an extension of time to do so. As a result, on March 11, 2025, the Court
16 issued an order to show cause why it should not be recommended that this matter be dismissed for
17 failure to prosecute and for failure to keep the Court apprised of his current address. ECF No. 9.
18 However, as an alternative to filing the showing of cause, Plaintiff was given the option of filing a
19 notice of current address along with a request for an extension of time to file an amended
20 complaint. Id. at 4. Plaintiff was given seven days to take either course of action. Id.

21 On March 24, 2025, the Court's order directing Plaintiff to show cause was returned to the
22 Court marked "Undeliverable, Return to Sender, Not Deliverable as Addressed, Unable to
23 Forward." See 3/24/25 docket entry. Thus, the last time Plaintiff interacted with the Court was in
24 September of 2024, when his notice of change of address was docketed. See ECF No. 7.

25 II. APPLICABLE LAW

26 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b)

27 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails
28 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110

1 also permits the imposition of sanctions when a party fails to comply with a court order. L.R.
2 110.

3 Local Rule 182(f) permits service to be effective service at a prior address if a party fails
4 to notify the Court and other parties of his address change. Id. Finally, Local Rule 183(b) gives a
5 party who appears in propria persona a period of time to file a notice of change of address if some
6 of his mail is returned to the Court. Id.

7 B. Malone Factors

8 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for
9 failure to comply with a court order. It writes:

10
11 A district court must weigh five factors in determining whether to dismiss a case
12 for failure to comply with a court order: “(1) the public’s interest in expeditious
13 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
14 prejudice to the defendants; (4) the public policy favoring disposition of cases on
15 their merits; and (5) the availability of less drastic sanctions.”

16 Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (quoting Thompson v.
17 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

18 III. DISCUSSION

19 A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This
20 Case

21 Although the docket indicates that Plaintiff’s copies of the orders directing him to file an
22 amended complaint and a notice of current address with the Court were returned, Plaintiff was
23 properly served. It is a plaintiff’s responsibility to keep a court apprised of his current address at
24 all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party
25 is fully effective. The fact that Plaintiff failed to file a notice of change of address with the Court
26 by itself warrants the dismissal of this matter, in accord with Rule 41(b) and Local Rules 110 and
27 183(b).

28 B. Application of Malone Factors Supports the Dismissal of This Case

1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket

1 Plaintiff has been given sufficient time to file a notice of change of address as well as file
 2 an amended complaint. Yet, he has failed to do either, nor has he contacted the Court to provide
 3 an exceptional reason for not having done so.

4 The Eastern District Court has an unusually large caseload.² “[T]he goal of fairly
 5 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to
 6 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San
 7 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that
 8 keeping this case on the Court’s docket when Plaintiff has not attempted to file a notice of current
 9 address with the Court or file an amended complaint is not a good use of the Court’s already
 10 taxed resources. Indeed, keeping this matter on the Court’s docket would stall a quicker
 11 disposition of this case. Additionally, in fairness to the many other litigants who currently have
 12 cases before the Court, no additional time should be spent on this matter.

13 2. Risk of Prejudice to Defendants

14 Furthermore, because viable Defendants have yet to be identified and served in this case,
 15 no one has put time and effort into defending against it. As a result, there will be no prejudice to
 16 anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit any
 17 potentially viable Defendants because they will not have to defend themselves against Plaintiff’s
 18 complaint.

19 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 20 Merits

21 Finally, given that Plaintiff has had sufficient time under the Local Rules to file a change
 22 of address³ since its order directing Plaintiff to file a notice of current address with the Court

23 ² The Eastern District of California carries one of the largest and most heavily weighted
 24 caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of
 25 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far
 26 exceeds the national average . . . ranking us fourth in the nation and first in the Ninth Circuit.”).
 27 This problem is compounded by a shortage of jurists to review its pending matters. See generally
 28 id. (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent
 judgeships for Eastern District of California).

³ In 2025, the period that a litigant appearing in propria person has to file a notice of change of
 address was reduced from sixty-three days to thirty days. See Local Rule 183(b)

1 issued, without the filing of a notice of new address by Plaintiff, there is no less drastic option
2 than dismissal. Although the disposition of cases on their merits is preferred, this matter cannot
3 be prosecuted without a current address for Plaintiff and without participation by Plaintiff, nor
4 can it be disposed of on its merits.

5 IV. CONCLUSION

6 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules
7 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends
8 that this matter be dismissed without prejudice for failure to prosecute. Despite the fact that
9 Plaintiff cannot be located and that no viable Defendants have been identified and served, a
10 period of fourteen days will be given for Plaintiff to file objections to this order. However,
11 should this order be returned to the Court marked undeliverable before the end of the fourteen-
12 day period, the District Judge that will be assigned to this action will likely dismiss it
13 immediately.

14 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
15 District Judge to this matter.

16 IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice
17 for Plaintiff's failure to prosecute and for his failure to keep the Court apprised of his current
18 address. See Fed. R. Civ. P. 41(b); Local Rules 110 and 183(b).

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, Plaintiff may file written objections
22 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings
23 and Recommendations," and it shall not exceed fifteen pages.

24 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff
25 wishes to refer to any exhibit, when possible, he must reference the exhibit in the record by its
26 CM/ECF document and page number or reference the exhibit with specificity. Any pages filed in
27 excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 28
28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. Plaintiff's failure to file

1 objections within the specified time may result in the waiver of certain rights on appeal. See
2 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th
3 Cir. 1991).

4
5 IT IS SO ORDERED.

6 Dated: **April 3, 2025**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE